

DANIEL E. MARTYN, JR. (State Bar No. 138122)
JOHN E. MORAN (State Bar No. 94179)
DIANA S. PONCE-GOMEZ (State Bar No. 187136)
DANNER & MARTYN, LLP
100 E. Thousand Oaks Blvd., Suite 244
Thousand Oaks, California 91360
Telephone: (805) 777-8700
Facsimile: (805) 778-0736

Attorneys for Plaintiff
DIRECTV, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DIRECTV, INC., a California corporation,

Plaintiff,

v.

RICHARD BRESLIN; SEAN DINH;
RICHARD A. JOHNSON; KELSON TRAN,

Defendants.

CASE NO.:

**COMPLAINT FOR COMPENSATORY,
STATUTORY AND OTHER DAMAGES, AND
FOR INJUNCTIVE RELIEF**

Plaintiff DIRECTV, Inc. ("DIRECTV") hereby complains as follows with respect to its claims arising under federal question jurisdiction 28 U.S.C. §§ 1331 and 1338(a).

NATURE OF THIS CASE

1. DIRECTV is the nation's leading direct broadcast satellite system, delivering over 225 channels of television and other programming to more than 10 million homes and businesses in the United States. DIRECTV's television programming currently includes major cable networks, studio movies and special events programming, as well as a variety of sports and other special interest programming. DIRECTV, a California company, has invested more than \$1.25 billion to develop its direct broadcast satellite system.

2. DIRECTV encrypts – electronically scrambles – its satellite transmissions to provide security for and prevent unauthorized viewing of its satellite television programming. DIRECTV offers its television programming to residential and business customers on a subscription and pay-per-

1 view basis only. Each customer is required to obtain a DIRECTV Access Card and other system
2 hardware (including a small satellite dish) and create an account with DIRECTV. Upon activation of
3 the Access Card by DIRECTV, the customer can receive and view in a decrypted format (*i.e.*,
4 unscrambled) those channels to which the customer has subscribed or otherwise made arrangement to
5 purchase from DIRECTV.

6 3. On May 25, 2001, DIRECTV executed Writs of Seizure, with the assistance of local
7 law enforcement, at the mail shipping facility used by several major sources of pirate technologies
8 including, but not limited to, White Viper Technologies ("White Viper"). During and subsequent to
9 the raids, DIRECTV came into possession of a substantial body of sales records, shipping records,
10 email communications, credit card receipts and other records, including but not limited to, additional
11 records obtained from White Viper on September 14, 2001. Those records evidence each defendant's
12 purchase of illegal "Pirate Access Devices" (as defined herein). In reliance upon those records and
13 other information, and upon information and belief, DIRECTV sets forth the allegations in this
14 Complaint.

15 4. On or about November 2002, DIRECTV obtained records from The Royal Canadian
16 Mounted Police ("RCMP") which were obtained by the RCMP from an individual named Reginald
17 Scullion. Mr. Scullion's business records relate to his operation of companies named "Avantec" and
18 "Vcipher Technologies" (hereinafter "Avantec"). Importantly, the business records turned over to
19 DIRECTV evidence ongoing illegitimate enterprise which focused on distributing electronic devices
20 primarily designed for the surreptitious interception of satellite communications broadcast by
21 DIRECTV. The records included orders, invoices, electronic communications, shipping
22 documentation, product descriptions and customer lists related to the distribution of Pirate Access
23 Devices.

24 5. Avantec specialized in the alteration and sale of pirated DIRECTV access cards and
25 other equipment used to illegally receive DIRECTV's satellite signals, thus enabling users to watch
26 pay per-view television channels without having to pay the broadcasters. Mr. Scullion was physically
27 located in Chemin De La Mairie (Mountain Ranches Road) Regaud, Canada, but due to the expansive
28 reach of internet sales, Scullion was able to conduct business nationwide and across many countries.

1 Avantec customers ordinarily placed orders through a website operated by Avantec known as
2 vcipher.com. Avantec clients are residents of Canada and the United States, as well as citizens of
3 Central and South America. Scullion himself has been involved actively in the theft of
4 telecommunication services since 1988. He has been known for a number of years to Canadian and
5 U.S. authorities for his illegal activities. The business records obtained evidence the purchases made
6 by Defendant SEAN DINH. Importantly, as the defendant is a United States residents, defendant's
7 acts of ordering and sending Pirate Access Devices to and from a Canadian source constitutes
8 importation and exportation of Pirate Access Devices, and such conduct violates federal statutory
9 communications law (47 U.S.C. § 605(e)(4)).

10 6. Each record obtained confirmed the existence of a distribution source for the country-
11 wide transmission of devices primarily designed for the unauthorized interception of DIRECTV's
12 Satellite Programming. More pertinently, the business records obtained pursuant to these events
13 evidence defendant's purchases of Pirate Access Devices. The devices or items were then shipped to
14 customers via United States mail or commercial carrier. The devices in question were primarily in the
15 assistance in the unauthorized decryption of DIRECTV Satellite Programming. In reliance on those
16 records and other information, and upon information and belief, DIRECTV brings this lawsuit against
17 the Defendant for Defendant's purchase, possession, importation, and/or use of Pirate Access Devices.

18 7. Each defendant is a resident of this District. DIRECTV alleges that each defendant has
19 purchased and used illegally modified DIRECTV Access Cards and Pirate Access Devices that are
20 designed to permit viewing of DIRECTV's television programming without authorization by or
21 payment to DIRECTV.

22 8. Each defendant's activities violate federal telecommunication and wiretapping laws and
23 common law. Specifically, each defendant's actions violate the Federal Communications Act of 1934,
24 as amended, 47 U.S.C. § 605 and the Electronic Communications Privacy Act ("Federal Wiretap
25 Laws"), 18 U.S.C. §§ 2510-2521. As a result of each defendant's decision to obtain Pirate Access
26 Devices and the detrimental impact that such activities have on the company, DIRECTV brings this
27 action seeking damages and injunctive relief against each defendant's continued possession and/or use
28 of Pirate Access Devices.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a), 47 U.S.C. § 605(e)(3)(A) and 18 U.S.C. § 2520(a) because the claims in this action arise under the Federal Communications Act of 1934, as amended, 47 U.S.C. § 605 and the Electronic Communications Privacy Act (“Federal Wiretap Laws”), 18 U.S.C. §§ 2510-2521.

10. This Court may exercise supplemental jurisdiction pursuant 28 U.S.C. § 1367(a) over the state law claims asserted herein.

11. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1) because each defendant is a resident of this district and is subject to personal jurisdiction in this district.

INTRADISTRICT ASSIGNMENT

12. Assignment of this action to the San Jose Division of the United States District Court for the Northern District of California is proper pursuant to Civil Local Rule 3-2(c) and Civil Local Rule 3-2(e) because the events which give rise to the claims in this action occurred in the county of Santa Clara.

PARTIES

13. Plaintiff DIRECTV, Inc. is a corporation duly incorporated under the laws of the State of California. DIRECTV has significant interests in maintaining and securing the integrity of its satellite transmissions of television programming, and in prohibiting the unauthorized reception and use of the same.

14. Defendant RICHARD BRESLIN is a resident of San Jose, California. Upon information and belief, beginning in or about July, 2000, Defendant RICHARD BRESLIN purchased one or more Pirate Access Devices from White Viper. Defendant placed each order by using interstate or foreign wire facilities, and received his orders via the United States Postal Service or commercial mail carriers. Specifically, these illegal purchases included the following transaction:

(a) On or about July 20, 2000, Defendant RICHARD BRESLIN purchased two (2) Pirate Access Devices, consisting of a printed circuit board device called a “Wildthing 2 Clone Unlooper” and programmer primarily designed to illegally modify DIRECTV Access Cards called a

///

1 “Viper Reader/Writer,” from White Viper. The devices were shipped to Defendant RICHARD
2 BRESLIN at his address in San Jose, California.

3 15. Defendant SEAN DINH is a resident of San Jose, California. Upon information and
4 belief, beginning in or about April, 1998, Defendant SEAN DINH purchased one or more Pirate
5 Access Devices from White Viper and Avantec. Defendant placed each order by using interstate or
6 foreign wire facilities, and received his orders via the United States Postal Service or commercial mail
7 carriers. Specifically, these illegal purchases included the following transactions:

8 (a) On or about April 14, 1998, Defendant SEAN DINH purchased three (3) Pirate
9 Access Devices, consisting of a printed circuit board device, a programmer primarily designed to
10 illegally modify DTV access cards and an illegally modified DIRECTV Access Card called a “Lil
11 Black Box with Blocker and 3M,” from Avantec. The devices were shipped to SEAN DINH at his
12 address in San Jose, California.

13 (b) On or about August 18, 1998, Defendant SEAN DINH purchased two (2) Pirate
14 Access Devices, consisting of an illegally modified DIRECTV Access Card and a printed circuit board
15 device called “An Advanced User CL-6000 and Brick Wall,” from Avantec. The devices were
16 shipped to SEAN DINH at his address in San Jose, California.

17 (c) On or about July 25, 2000, Defendant SEAN DINH purchased a Pirate Access
18 Device, consisting of a printed circuit board device called an “unlooper,” from White Viper. The
19 device was shipped to Defendant SEAN DINH at his work address in San Jose, California.

20 16. Defendant RICHARD A. JOHNSON is a resident of San Jose, California. Upon
21 information and belief, beginning in or about August, 2000, Defendant RICHARD A. JOHNSON
22 purchased one or more Pirate Access Devices from White Viper. Defendant placed each order by
23 using interstate or foreign wire facilities, and received his orders via the United States Postal Service
24 or commercial mail carriers. Specifically, these illegal purchases included the following transaction:

25 (a) On or about August 1, 2000, Defendant RICHARD A. JOHNSON purchased
26 two (2) Pirate Access Devices, consisting of a programmer primarily designed to illegally modify
27 DIRECTV Access Cards called a “Viper Reader/Writer” and a printed circuit board device called a
28 “Whiteviper Unlooper,” from White Viper. The devices were shipped to Defendant RICHARD A.

1 JOHNSON at his former address in San Jose, California.

2 17. Defendant KELSON TRAN is a resident of San Jose, California. Upon information
3 and belief, beginning in or about July, 2000, Defendant KELSON TRAN purchased one or more
4 Pirate Access Devices from White Viper. Defendant placed each order by using interstate or foreign
5 wire facilities, and received Defendant's orders via the United States Postal Service or commercial
6 mail carriers. Specifically, these illegal purchases included the following transaction:

7 (a) On or about July 18, 2000, Defendant KELSON TRAN purchased a Pirate
8 Access Device, consisting of a printed circuit board device called a "Wildthing 2 Clone Unlooper,"
9 from White Viper. The device was shipped to Defendant KELSON TRAN at Defendant's address in
10 San Jose, California.

11 **FIRST CAUSE OF ACTION**

12 **UNAUTHORIZED RECEPTION OF SATELLITE SIGNALS**

13 **IN VIOLATION OF 47 U.S.C. § 605(a)**

14 **(AGAINST ALL DEFENDANTS)**

15 18. Plaintiff DIRECTV repeats and realleges the allegations in Paragraphs 1 through 17 as
16 if set forth fully herein.

17 19. Each defendant has received and assisted others in receiving DIRECTV's satellite
18 transmissions of television programming without authorization, in violation of 47 U.S.C. § 605(a).

19 20. Each defendant's violations have injured and will continue to injure DIRECTV by
20 depriving DIRECTV of subscription and pay-per-view revenues and other valuable consideration,
21 compromising DIRECTV's security and accounting systems, infringing DIRECTV's trade secrets and
22 proprietary information, and interfering with DIRECTV's contractual and prospective business
23 relations.

24 21. Each defendant knew or should have known that receiving and assisting third persons
25 in receiving DIRECTV's satellite transmissions of television programming without authorization by or
26 payment to DIRECTV was and is illegal and prohibited. Such violations have caused and will
27 continue to cause DIRECTV irreparable harm, and DIRECTV has no adequate remedy at law to
28 redress any such continued violations. Unless restrained by this Court, each defendant will continue to

1 violate 47 U.S.C. § 605(a).

2 **SECOND CAUSE OF ACTION**

3 **UNAUTHORIZED INTERCEPTION OF ELECTRONIC**
4 **COMMUNICATIONS IN VIOLATION OF 18 U.S.C. § 2511(1)(a)**
5 **(AGAINST ALL DEFENDANTS)**

6 22. Plaintiff DIRECTV repeats and realleges the allegations in Paragraphs 1 through 21 as
7 if set forth fully herein.

8 23. By using Pirate Access Devices to decrypt and view DIRECTV's satellite
9 transmissions of television programming, each defendant intentionally intercepted, endeavored to
10 intercept, or procured other persons to intercept or endeavor to intercept, DIRECTV's satellite
11 transmission of television programming, in violation of 18 U.S.C. § 2511(1)(a).

12 24. Each defendant's violations have injured and will continue to injure DIRECTV by
13 depriving DIRECTV of subscription and pay-per-view revenues and other valuable consideration,
14 compromising DIRECTV's security and accounting systems, infringing DIRECTV's trade secrets and
15 proprietary information, and interfering with DIRECTV's contractual and prospective business
16 relations.

17 25. Each defendant knew or should have known that such interception of DIRECTV's
18 satellite transmissions of television programming was and is illegal and prohibited. Such violations
19 have caused and will continue to cause DIRECTV irreparable harm, and DIRECTV has no adequate
20 remedy at law to redress any such continued violations. Unless restrained by this Court, each
21 defendant will continue to violate 18 U.S.C. § 2511(1)(a).

22 **THIRD CAUSE OF ACTION**

23 **POSSESSION OF PIRATE ACCESS DEVICES**
24 **IN VIOLATION OF 18 U.S.C. § 2512(1)(b)**
25 **(AGAINST ALL DEFENDANTS)**

26 26. Plaintiff DIRECTV repeats and realleges the allegations in Paragraphs 1 through 25 as
27 if set forth fully herein.

28 27. Each defendant has used Pirate Access Devices to decrypt and view DIRECTV's

1 satellite transmissions of television programming, with intent to avoid payment of the lawful charges
2 therefor, by trick, artifice, deception, use of a device or decoder, and other fraudulent means, without
3 authority from DIRECTV, in violation of 18 U.S.C. § 2512(1)(b).

4 28. Each defendant has possessed and used Pirate Access Devices, with intent to avoid
5 payment to DIRECTV of the lawful charges for its programming, that are designed in whole or in part
6 to receive subscription television services offered for sale by DIRECTV, without authority of
7 DIRECTV, in violation of 18 U.S.C. § 2512(1)(b).

8 29. Each defendant's violations have injured and will continue to injure DIRECTV by
9 depriving DIRECTV of subscription and pay-per-view revenues and other valuable consideration,
10 compromising DIRECTV's security and accounting systems, infringing DIRECTV's trade secrets and
11 proprietary information, and interfering with DIRECTV's contractual and prospective business
12 relations.

13 30. Each defendant knew or should have known that possessing Pirate Access Devices was
14 and is illegal and prohibited. Such violations have caused and will continue to cause DIRECTV
15 irreparable harm, and DIRECTV has no adequate remedy at law to redress any such continued
16 violations. Unless restrained by this Court, each defendant will continue to violate 18 U.S.C. §
17 2512(1)(b).

18 **FOURTH CAUSE OF ACTION**

19 **CONVERSION**

20 **(AGAINST ALL DEFENDANTS)**

21 31. Plaintiff DIRECTV repeats and realleges the allegations in Paragraphs 1 through 30 as
22 if set forth fully herein.

23 32. By importing, possessing and using Pirate Access Devices, each defendant has
24 unlawfully converted to their own use and benefit property belonging to DIRECTV.

25 33. Such conversion was done intentionally and wrongfully by each defendant to deprive
26 DIRECTV of its proprietary interests and for each defendant's direct benefit and advantage.

27 34. As a direct and proximate result of each defendant's unlawful acts, DIRECTV has
28 suffered and continues to suffer damages, including lost subscription and pay-per-view revenues and

1 other valuable consideration.

2 **FIFTH CAUSE OF ACTION**

3 **IMPORTATION OF SATELLITE SIGNAL THEFT DEVICES**

4 **IN VIOLATION OF 47 U.S.C. § 605(e)(4)**

5 **(AGAINST DEFENDANT SEAN DINH)**

6 35. Plaintiff DIRECTV repeats and realleges the allegations in Paragraphs 1 through 34 as
7 if set forth fully herein.

8 36. Defendant has imported satellite theft signal theft devices without authorization,
9 knowing or having reason to know that such devices are primarily of assistance in the unauthorized
10 decryption DIRECTV's satellite transmissions of television programming, or are intended by
11 Defendant to assist other persons in the unauthorized reception and use of DIRECTV's satellite
12 transmissions of television programming, in violation of 47 U.S.C. § 605(e).

13 37. Defendant's violations have injured and will continue to injure DIRECTV by depriving
14 DIRECTV of subscription and pay-per-view revenues and other valuable consideration, compromising
15 DIRECTV's security and accounting systems, infringing DIRECTV's trade secrets and proprietary
16 information, and interfering with DIRECTV's contractual and prospective business relations.

17 38. Such violations have caused and will continue to cause DIRECTV irreparable harm,
18 and DIRECTV has no adequate remedy at law to redress any such continued violations. Unless
19 restrained by this Court, each defendant will continue to violate 47 U.S.C. § 605(e)(4).

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff DIRECTV requests that this Court grant the following relief:

22 (1) Find the defendants' conduct in importing, possessing and using Pirate Access Devices
23 violates 47 U.S.C. § 605(a) and (e)(4), 18 U.S.C. §§ 2511(1)(a) and 2512(1)(b), and California
24 common law, and further find that defendants' violations were willful, malicious or for a tortious or
25 illegal purpose;

26 (2) In accordance with 47 U.S.C. § 605(e)(3)(B)(i) and 18 U.S.C. § 2520(b)(1), enjoin and
27 restrain each defendant, and persons controlled directly and indirectly by each defendant, from
28 importing, possessing, or using Pirate Access Devices, and further order each defendant to surrender

1 all Pirate Access Devices;

2 (3) In the event of a default, an award of statutory damages of \$10,000 for each Pirate
3 Access Device possessed and used in violation of 18 U.S.C. 2520 (c)(2) and for each Pirate Access
4 Device imported into the United States in violation of 47 U.S.C. § 605(e)(4), and a further award of
5 DIRECTV's reasonable attorneys' fees and costs of suit;

6 (4) In the event of trial, an award of either (a) statutory damages in accordance with
7 47 U.S.C. § 605(e)(3)(C)(i)(II) and 18 U.S.C. § 2520(c)(2), or (b) compensatory and punitive damages
8 in accordance with 47 U.S.C. § 605(e)(3)(C)(i)(I), 18 U.S.C. § 2520(c)(2), and California common
9 law; and DIRECTV's reasonable attorneys' fees and costs in accordance with 47 U.S.C.
10 § 605(e)(3)(B)(iii) and 18 U.S.C. § 2520(b)(3);

11 (5) For such additional relief as the Court deems just and equitable.

12
13 Dated: September ____, 2003

DANNER & MARTYN, LLP

14
15
16 By: _____
Diana S. Ponce-Gomez
Attorneys for Plaintiff DIRECTV, INC.